

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**WEST VIRGINIA BOARD OF RISK
AND INSURANCE MANAGEMENT,**

Petitioner,

v.

Civil Action No. 2:18-cv-00368

UNITED STATES OF AMERICA,

Honorable _____, Judge

Respondent.

PETITION FOR WRIT OF MANDAMUS

COMES NOW the West Virginia Board of Risk and Insurance Management (hereinafter “BRIM” or “Petitioner”), by counsel, Stephen M. Fowler, Geoffrey Cullop, and Evan Olds, and seeks relief in mandamus pursuant to 28 U.S.C. §§ 1361 and 1651.

Specifically, the Board of Risk seeks to compel the United States of America to remit a one-percent assessment of the final judgment entered against the United States in *Smith et al. v. United States of America*, Civil Action No. 5:14-cv-30075, on November 15, 2016, in the United States District Court for the Southern District of West Virginia, Beckley Division.¹ The one-percent assessment is owed to the Patient Injury Compensation Fund pursuant to W. Va. Code § 29-12D-1a(c).

Under W. Va. Code § 29-12D-1a(c), the Board of Risk has a clear right to the relief sought, and the United States has a clear duty to remit one-percent from the judgment entered in *Smith et al. v. United States of America*. No other adequate remedy is available for the

¹ Respondent United States of America has also refused to remit payment in other similarly situated cases, as discussed in the *Memorandum of Law in support of Petition for Writ of Mandamus*. See Ex. 3 attached thereto.

enforcement of the one-percent assessment provision. As further demonstrated in the *Memorandum of Law* accompanying this *Petition*, a writ of mandamus should issue.

Respectfully submitted,

WEST VIRGINIA BOARD OF RISK AND
INSURANCE MANAGEMENT

/s/ Stephen M. Fowler

Stephen M. Fowler, Esquire (WVSB #5113)

Geoffrey Cullop, Esquire (WVSB #11508)

Evan A. Olds, Esquire (WVSB #12311)

PULLIN, FOWLER, FLANAGAN,

BROWN & POE, PLLC

JamesMark Building

901 Quarrier Street

Charleston, WV 25301

(304) 344-0100